UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13

ECOLAB ELK GROVE EQUIPMENT OPERATIONS,

Employer

And

INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS,

Petitioner

Case 13-RC-20909

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(*c*) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(*b*) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record[1] in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.[2]

3. The labor organization involved claims to represent certain employees of the Employer.[3]

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(*c*)(*1*) and Section 2(*6*) and (*7*) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(*b*) of the Act:[4]

> All full- and regular part-time refurbishing, rack assembly and warehouse distribution employees, employed by the employer at its facility currently located at 1060 Thorndale Avenue in Elk Grove Village, Illinois, excluding all office clerical, professional, managerial, temporary and all other employees, guards and supervisors defined by the Act.

DIRECTION OF ELECTION*

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(*s*) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(*s*) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike, which commenced less than 12 months before the election date, employees engaged in such strikes who have retained their status, as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if

they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by the International Association of Machinists & Aerospace Workers, AFL-CIO.

LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of the full names of voters and their addresses, which may be used to communicate with them. ***Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359, fn. 17 (1994).** Accordingly, it is hereby directed that within 7 days of the date of this Decision, 2 copies of an election eligibility list, containing the full names and addresses of all of the eligible voters, shall be filed by the Employer with the undersigned Regional Director who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in **Suite 800, 200 West Adams Street, Chicago, Illinois 60606** on or before **December 30, 2002**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, Franklin Court Building, 1099-14th Street, N.W., Washington, D.C. 20570.** This request must be received by the Board in Washington by **January 6, 2003**.

DATED December 23, 2002 at Chicago, Illinois.

/s/Harvey A. Roth
Acting Regional Director, Region 13

*/ The National Labor Relations Board provides the following rule with respect to the posting of election notices:

(a) Employers shall post copies of the Board's official Notice of Election in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. In elections involving mail ballots, the election shall be deemed to have commenced the day the ballots are deposited by the Regional Director in the mail. In all cases, the notices shall remain posted until the end of the election.

(b) The term "working day" shall mean an entire 24-hour period excluding Saturdays, Sundays, and holidays.

(c) A party shall be estopped from objection to nonposting of notices if it is responsible for the nonposting. An employer shall be conclusively deemed to have received copies of the election notice for posting unless it notifies the Regional Director at least 5 working days prior to the commencement of the election that it has not received copies of the election notice.

1/ The arguments advanced by the parties at the hearing and in their post-hearing briefs have been carefully considered.
2/ The Employer is a corporation engaged in refurbishing dish washing machines, assembling dish racks, and conducting distribution operations for those products.
3/ The Employer contends that the International Association of Machinists & Aerospace Workers (Petitioner or International) is not a "labor organization" within the meaning of Section 2(5) of the Act, because the petition filed in this case does not identify which organization or affiliate of the International--a local, district, or the International itself--would represent the employees in the petitioned-for unit.

Section 2(5) of the Act defines a "labor organization" as:

> [A] ny organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

This statutory definition of "labor organization" has long been interpreted broadly. *See, e.g., Electromation, Inc.*, 309 NLRB 990, 993-4 (1992), *ord. enf. Electromation, Inc. v. N.L.R.B.*, 35 F.3d 1148 (7th Cir. 1994). To be a "labor organization," the Board requires that (1) employees participate in the organization; and (2) the organization exists, in whole or in part, for the purpose of "dealing with" the employer concerning wages, hours, and other terms and conditions of employment. *Alto Plastics Mfg. Corp.*, 136 NLRB 850, 851-52 (1962). The term "dealing with" has been interpreted to extend beyond simply "bargaining with" an employer. *N.L.R.B. v. Cabot Carbon Company*, 360 U.S. 203, 210-212 (1959).

Based on the evidence presented at the hearing, I find that the Petitioner is a labor organization within the meaning of the Act. The record establishes that employees participate in the International's processes, including having a voice in determining whom the Petitioner would designate to act on their behalf in dealing with the employees' employer. Second, the activities in which the Petitioner engages, such as filing grievances on employees' behalf and bargaining with employers over wages and working conditions, demonstrates that the Petitioner deals with employers concerning the terms and conditions of its members' employment. Further, the Petitioner is affiliated with the AFL-CIO, an organization which I take notes, exists for the purpose of improving the employees terms and conditions of employment with their employers.

I am unpersuaded by the Employer's argument that the Petitioner is not a "labor organization" because it failed to identify in its petition which district or local, if any, would represent the bargaining unit. A bargaining representative is empowered to designate and authorize agents, including other labor organizations, to act on its behalf. *CCI Construction Co., Inc.*, 326 NLRB 1319 (1998). The record establishes that the International itself is a labor organization pursuant to Section 2(5). If it is ultimately selected as the unit's exclusive bargaining representative, the International has the

authority to then designate an agent, including one of its districts or locals, to act on its behalf.

After considering the record in its entirety, I find no reason that the petitioner cannot proceed to an election in the petitioned-for unit.

4/ In its petition, the petitioner sought to represent a unit of all full-time and regular part-time production and maintenance employees engaged in the refurbishing of dish washing machines. However, at the hearing, the Petitioner and the Employer stipulated that the unit also would include rack assembly and distribution operations employees.

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Labor Organization Status
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